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bcc: Eric Johnson, 8ENF-RC
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THIS DOES
TITLE & DATE
RESEMBLES SDMS #
1023335
BUT AUTHOR/ADDRESS
DIFFERS



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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Ref: 8ENF-L

SEP 26 2005

SENT VIA REGULAR MAIL

Mr. Glenn Rogers, Chairman
Shivwits Band of the Paiute Tribe
P.O. Box 448
Santa Clara, UT 84765

Re: Hecla Mining Company Apex Site
Pond 2 Off-site Removal Request

Dear Chairman Rogers:

This letter pertains to the July 12, 2005, request by the Bureau of Indian Affairs ("BIA") for the offsite removal of all beneficiation waste from Hecla Mining Company's Apex Site, Pond 2 ("Pond 2" or "impoundment"). The Environmental Protection Agency ("EPA") is concerned that the request is delaying current closure activities and may ultimately jeopardize permanent closure.

EPA's concerns stem from the agency's statutory responsibility to protect human health and the environment, as well as its trust responsibility to the Shivwits Band of Paiute Indian Tribe (the "Band"). In addition, EPA has a vested interest in full satisfaction of the Administrative Order on Consent ("AOC") entered into with Hecla pursuant to section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. sec. 6973. The terms of the AOC include, but are not limited to, implementation of the EPA-approved Closure Work Plan. Please note that interpretation of the lease between the Band and Hecla is beyond EPA's purview.

As you know, closure activities at Pond 2 have been on-going since July 2004, pursuant to Hecla's Final Closure Plan as approved by the Environmental Protection Agency ("EPA"). BIA's request arrived just as Hecla was completing the dewatering phase of closure and preparing to install the final cover over the impoundment. EPA is concerned that the delay affecting Hecla's ability to perform its obligations under the AOC caused by BIA's request may prohibit satisfactory or timely closure of the impoundment, resulting in the unnecessary risk of exposure to and/or release of solid waste. EPA also is concerned that Hecla may discontinue further closure activities altogether and simply forfeit its bond if prohibited from completing closure in accordance with its Final Closure Plan.



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Based on these concerns, EPA concurs with Hecla's plan, as outlined in its letter of August 23, 2005, to proceed with closure of Pond 2 pursuant to the EPA-approved closure plan and the AOC. Although EPA initially supported Hecla's plan of July 2005, to temporarily discontinue all further reclamation activities outlined in the Final Closure Plan, other than the ongoing dewatering operation, while Hecla assessed its position under the lease, the dewatering operation is now successfully complete. It is imperative the impoundment be properly capped before further precipitation events. To do otherwise would not be in the best interest of all parties involved and would be inconsistent with EPA's statutory and trust responsibilities to ensure environmental and public health protection in Indian country.

Hecla's Final Closure Plan, if successfully implemented, ensures closure of the impoundment in an environmentally protective manner. EPA approved Hecla's Final Closure Plan, including the drainage/consolidation method and cover system selected by Hecla for final closure, after determining that the proposed alternative provided for effective and economic closure of Pond 2. EPA's approval followed the opportunity for the Band, EPA and BIA to review and comment on the draft final closure plan. In addition, the Final Closure Plan is based on more than five years of comprehensive investigation and analysis of Pond 2 and included extensive sampling of the wastepile, surrounding soils, and underlying ground water. Hecla also performed a full investigation and soils sampling and analysis of Pond 2 to fully analyze the site in October 2001.

EPA's findings that the Final Closure Plan is environmentally protective are supported by the recent site investigation and evaluation of closure activities at Pond 2 performed by EPA Geohydrologist, Randall Breeden, on May 16-17, 2005. Mr. Breeden's findings confirmed that the closure plan is being implemented in a professional and technologically correct manner. Mr. Breeden further confirmed EPA's earlier determination that off-site liquid migration and potential impact to nearby ground water or surface water would be virtually impossible.

In the event that the Band would like to make its own determinations regarding the potential risks associated with capping the pond on-site as opposed to removal, my staff is available to assist you in reviewing the site sampling and analysis material. If you have questions, please do not hesitate to contact me at (303) 312-6051. The members of my staff who are most knowledgeable about this matter are Eric Johnson, Environmental Scientist, at (303) 312-6357, and Amy Swanson, Enforcement Attorney, at (303) 312-6906.

Sincerely,

Eddie A. Sierra
for Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

cc: Lawrence Snow, Shivwits Band of Paiute Tribe
Lora Tom, Chairwoman, Paiute Indian Tribe
John Krause, BIA Western Region Office
John Jacus, Davis Graham & Stubbs
Chris Gypton, Hecla Mining Company
Tod Smith, Whiteing & Smith